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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 963

SARA T. WALSH,

Petitioner,

vs.

SCHOOL DISTRICT OF PHILADELPHIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

GEORGE C. KLAUDER,
ABRAHAM KOPPELMAN,
WESLEY H. CALDWELL,
Counsel for Petitioner.

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vs.

SCHOOL DISTRICT OF PHILADELPHIA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Sara T. Walsh respectfully represents:

1. Your petitioner respectfully prays for a writ of certiorari herein to review a final decision of the Supreme Court of the State of Pennsylvania, the highest Court of said State, in the above entitled action, the opinion and decision of said Court having been rendered and filed November 24, 1941 and reported in 343 Penna. State Reports 178, (22 Atlantic Reporter, 2nd Series 909) and (R. 79). The said court affirmed a judgment of the Superior Court of Pennsylvania, which had affirmed a

judgment entered against petitioner in favor of respondent by the Municipal Court of Philadelphia County, Pennsylvania, holding valid a statute of the Commonwealth of Pennsylvania, contrary to the petitioner's contention that the said statute is repugnant to the contract clause of the Constitution of the United States.

2. A Statement of the Matter Involved Is:

Petitioner is a teacher, employed by the School District of Philadelphia, respondent, a statutory corporation administering the Public School District in Philadelphia, and has been so employed for sixteen years. On March 8, 1938, she entered into a written contract with respondent, as required by the terms of the Tenure Act of April 6, 1937, P. L. 213 of Pennsylvania, in the form prescribed by that Act, which amended the provisions of the School Code of Pennsylvania of May 18, 1911, P. L. 309 relating to contracts with teachers. The contract by the terms of the Statute, thereafter could only be terminated by respondent for cause after hearing. The yearly salary stated in the written contract was the sum of $2800., the amount petitioner had been receiving from respondent when the Tenure Act became effective and was the amount required by that Act to be stated in the statutory contract. The Legislature of Pennsylvania by the Act of June 20, 1939, P. L. 479, which amended the Budget Section of the School Code of 1911 but not the Tenure Act, permitted respondent to reduce the salaries of teachers who were earning $2500 a year or more, by an amount not to exceed five per cent of their yearly salaries. Respondent, by its resolution of December 12, 1939, reduced the salaries of all of its teachers who were receiving $2500 a year or more, including that of petitioner, by five per cent, effective as of January 1, 1940. Petitioner protested the reduction and demanded her full contractual salary, which was refused. She then brought

suit in the Municipal Court of Philadelphia County, Pennsylvania, alleging among other things that the State Statute was repugnant to the contract clause of the Federal Constitution. The Municipal Court entered judgment against her and in favor of the respondent, upon respondent's original plea, entitled an "Affidavit of Defense in lieu of Demurrer." Petitioner then appealed to the Superior Court of Pennsylvania, which affirmed the judgment, and thereafter filed a petition to the Supreme Court for leave to appeal from the judgment of the Superior Court, which was duly allowed. The appeal was duly perfected and argued, and the Supreme Court of Pennsylvania affirmed the judgment.

3. The Grounds for Jurisdiction to Review Are:

(a) The case presents a question of great importance to all of the school teachers in the Commonwealth of Pennsylvania whose rights secured under the Constitution of the United States will be entirely destroyed if the State legislation impairing their contracts under the Tenure Act, is held valid.

Although the Supreme Court of Pennsylvania held that the contract by its terms is subject to future amendment, and the Legislature had the right to reduce petitioner's salary stated therein, thus deciding the matter on a non-federal ground, the decision of the State court in that respect is not final in view of petitioner's contention that the Statute is repugnant to the contract clause of the Federal Constitution.

In *Irving Trust Co.* v. *Day,* 62 S. Ct. 398 (January 5, 1942) your Honorable Court said: "When this Court is asked to invalidate a State Statute upon the ground that it impairs the obligation of a contract, the existence of the contract and the nature and extent of its obligation become

Federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution, and for such purposes finality cannot be accorded to the views of a State Court."

Petitioner's contract contains the provision "this contract is subject to the provisions of the Act approved the eighteenth day of May one thousand nine hundred and eleven * * * *and the amendments thereto.*" Respondent contends that the contract by reason of that provision is subject to later amendment, in view of *U. S. Mortgage Co.* v. *Matthews*, 293 U. S. 232. The Statute involved in that case, however, is materially different in its provisions that it was subject to "*or* any amendments *or additions thereto*", which is much broader than the provision in petitioner's contract. A future alternative or substitution is distinctly implied by the use of the word "or", while the word "and", which only is found in petitioner's contract, connotes an addition existing at the time of the execution of the contract. The Statute in the *Matthews* case also contains the words "or additions thereto", which are not in the provisions of petitioner's contract. Moreover, it is clear from the opinion of your Honorable Court in the *Matthews* case, that future amendments were there intended because no amendments had been made to the Statute when the mortgage was executed. On the other hand, there had been many amendments made to the School Code of 1911 before petitioner's contract was signed.

A conclusive reason for the exercise of jurisdiction in this case is found in the very terms of petitioner's contract (R. 43). The Statute which framed the contract declared that none of the statutory provisions included therein could be changed but expressly gave freedom to respondent to increase the stated salary without invalidating the contract. No similar right to decrease the salary was given and it is

a reasonable and inescapable conclusion that such power was expressly withheld. In *Continental Casualty Co.* v. *U. S.*, 62 S. Ct. 393 (January 5, 1942), your Honorable Court in construing an Act of Congress said: "Generally speaking a 'legislative affirmative description' implies denial of the nondescribed powers." Since the State Legislature described the power to increase, the denial of the right to reduce the salary is clearly implied.

The reference in the State Statute respecting the increase of salary while applying to respondent as the other party to the contract and not to the State itself, leaves no room for inference that the State was free to make later modifications resulting in a reduction, because petitioner's contract is with the State itself, as the Supreme Court of Pennsylvania distinctly held in *Malone* v. *Hayden*, 329 Pa. 213 (197 A. 344). It would be a most unusual contract, hardly worth designation as such, if it was within the power of one of the parties to change it when and as it was convenient for it to do so.

(b) The decision of the Supreme Court of Pennsylvania in favor of the validity of the Statute of that State contrary to petitioner's contention that it is repugnant to Article I, Section 10, Clause 1 of the Constitution of the United States, of itself, is within the Appellate jurisdiction of your Honorable Court under the Act of March 3, 1911, c. 231, Sections 236, 237, 36 Stat. 1156; as amended. (28 U. S. C. A. 344.)

(c) Aside from the importance of the issue presented, petitioner submits that the writ should be allowed for the reason that the decision below is clearly erroneous and not in accord with the decision of your Honorable Court in *State of Indiana, ex rel. Anderson* v. *Brand*, 303 U. S. 95.

4. Petitioner Raised the Federal Question involved in the case, in the Municipal Court of Philadelphia, the Court

of first instance, in her original pleading entitled "Statement of Claim", by averring therein that the Statute violated the contract clause of the Constitution of the United States (R. 41). That court, in its opinion (R. 59) stated that it considered the question and decided the same against petitioner. In petitioner's appeal to the Superior Court under the Assignments of Error, she raised and argued the Federal question in the Statements of Question Involved. That Court discussed the question at length in its opinion (R. 12 and 33) and decided the Statute to be valid. Petitioner again raised the question in the Supreme Court in her petition for appeal (R. 3) and in her Assignments of Error filed in that Court (R. 33). That Court affirmed the judgment, in a Per Curiam order, upon the opinion of Superior Court Judge Rhodes.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of your Honorable Court, directed to the Supreme Court of Pennsylvania, commanding that court to certify and send to your Honorable Court for review and determination, a transcript of the record and proceedings thereon, and that the decree of the Supreme Court of Pennsylvania be reversed by your Honorable Court and that your petitioner have such other and further relief in the premises as to your Honorable Court may seem meet and just.

And petitioner will ever pray, etc.

SARA T. WALSH,
Petitioner.

GEORGE C. KLAUDER,
ABRAHAM KOPPELMAN,
W. H. CALDWELL,
Counsel for Petitioner.

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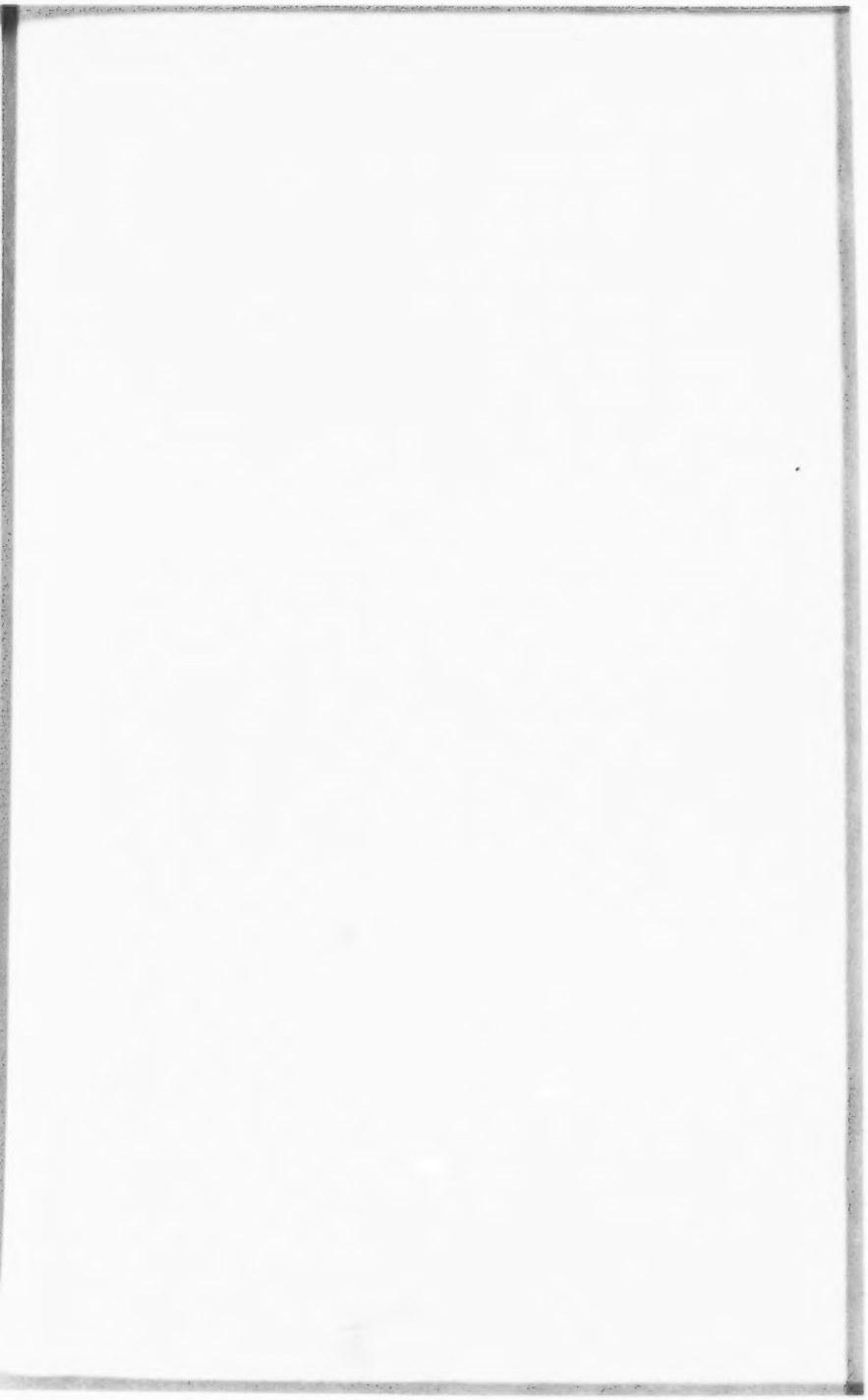

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October Term, 1941.

No. 963.

SARA T. WALSH,

Petitioner,

v.

SCHOOL DISTRICT OF PHILADELPHIA.

Respondent's Brief Contra Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1941.

No. 963.

SARA T. WALSH,

Petitioner,

v.

SCHOOL DISTRICT OF PHILADELPHIA.

RESPONDENT'S BRIEF CONTRA PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

STATEMENT OF QUESTIONS INVOLVED.

1. When a state statute requires such state's incorporated public school districts to enter into written employment contracts with their teachers (the form of such contracts being set forth *verbatim* in the statute), which contain a reservation, by the state's Legislature, of the right to change, modify or even abolish the said contracts, is a later statute (purporting to authorize the first class school districts of such state to reduce, temporarily, the salaries of teachers who had theretofore been receiving $2,500., or more, per year under such contracts), unconstitutional as a violation of the "impairment of contract" clause of the Federal Constitution?

2. In this situation, are not the decisions of the highest court of such state holding that the said contracts contained the said reserved right of such state's Legislature to change, modify or even to abolish the said contracts, binding upon this Court?

HISTORY OF THE CASE.

This was an action in assumpsit, which was instituted, in the Municipal Court of Philadelphia, Pennsylvania, by the plaintiff, Sara T. Walsh, a teacher in one of the junior high schools maintained and operated by the defendant, the School District of Philadelphia, to recover from said defendant the sum of $7.00, alleged to be owing by the defendant to the plaintiff under the contract between them, entered into pursuant to the "Teachers' Tenure" Act of April 6, 1937, P. L. 213.

The pleadings consist of the plaintiff's statement of claim, (R. 38-55), and the defendant's affidavit of defense in lieu of demurrer (R. 55-58).

The matter was argued before the Honorable Thomas H. Bluett, Judge of the said Municipal Court, on April 26, 1940, and on May 17, 1940, Judge Bluett filed his opinion, (R. 59-76), in which he resolved the questions of law, raised by the defendant's affidavit of defense in lieu of demurrer, in favor of the defendant. Thereafter, the Court entered final judgment for the defendant as follows, (R. 77):

> "June 3, 1940 At the argument upon Deft's affdt of defense in lieu of demurrer, Plff's counsel stated that the question for decision were solely a legal question and that no question of fact was involved and Plff could not by any amendment to her statement of claim, state any additional or further cause of action. Since the decision of the questions of law raised by the Deft. in our opinion disposes of the whole of Plff's claim judgment is hereby entered for the Deft. (Bluett J)"

From this judgment of the Municipal Court, the plaintiff appealed to the Superior Court of Pennsylvania. The appeal was argued in that Court on October 14, 1940, and

on April 16, 1941, the said Court handed down its decision *affirming* the judgment of the lower court. The opinion of the Superior Court was written by the Honorable Chester H. Rhodes, and it is reported at 144 Pa. Superior Ct. 321. The opinion is also printed in the transcript of record in this Court, at pages 9-33.

Thereafter, the plaintiff petitioned the Supreme Court of Pennsylvania for leave to appeal to that Court from the judgment of the Superior Court, and on May 12, 1941, that Court entered an order allowing the appeal. The plaintiff then perfected her appeal to the said Court, the matter was argued before it on October 2, 1941, and on November 24, 1941, the said Court handed down its decision affirming the judgment of the lower court on the opinion of Judge Rhodes in the Superior Court (343 Pa. 178; R. 79). Thereupon, the plaintiff filed her petition for a writ of certiorari to the Supreme Court of Pennsylvania which now comes before Your Honorable Court for disposition.

The essential facts are as follows:

In September, 1924, the defendant employed the plaintiff as a school teacher, and that employment has continued until the present time, the plaintiff now being a teacher in the Penn Treaty Junior High School, in the School District of Philadelphia, (R. 38). On March 8, 1938, the plaintiff and defendant entered into a written contract of employment, as required by the "Teachers' Tenure" Act of April 6, 1937, P. L. 213, (R. 39), in which Act the form of the required contract was set forth *verbatim*. The said contract is set forth in full in the Record, at pages 43 to 45, its essential provisions being as follows:

> a. The defendant employed the plaintiff as a teacher for the term of 10 months, for an annual com-

pensation of $2,800., payable in monthly or semi-monthly installments, less the contributions required by law to be paid to the Teachers' Retirement Fund, and other proper deductions.

b. The said contract was to continue in full force and effect from year to year, until terminated by the resignation, or dismissal, of the plaintiff, who could be dismissed only for the reasons, and in the manner, set forth in the Act.

c. *The said contract also contained the following important provision,* (R. 43, 44):

"This contract is subject to the provisions of the act approved the eighteenth day of May one thousand nine hundred and eleven (Pamphlet Laws three hundred nine) entitled 'An act to establish a public school system in the Commonwealth of Pennsylvania together with the provisions by which it shall be administered and prescribing penalties for the violation thereof providing revenue to establish and maintain the same and the method of collecting such revenue and repealing all laws general special or local or any parts thereof, that are or may be inconsistent therewith' *and the amendments thereto.*" (Emphasis supplied.)

On December 12, 1939, the defendant's Board of Education, acting under the authority conferred upon it by the Act of June 20, 1939, P. L. 479,* 24 P. S. Supp. § 571 (page 49), et seq., adopted the following Resolution, (R. 39; Resolution, 45):

"That effective January 1, 1940, and until further action of the Board, the salary status of all employees,

* The Act of June 20, 1939, P. L. 479, is set forth in full in the transcript of record in this Court, at pages 46 to 52.

as established for 1939 by resolutions of the Board, be continued; provided that all salaries in excess of $2,500., which were not subject to a reduction during 1939, be reduced 5%."

This Resolution reduced the plaintiff's annual salary of $2,800., by 5%, or $140., and accordingly, the defendant deducted the proportionate part thereof, viz. $7.00, from the first semi-monthly salary payment made to the plaintiff in 1940, (R. 41), the plaintiff's salary being paid in twenty semi-monthly installments. The plaintiff then instituted an action in assumpsit to recover the said sum of $7.00, contending, *inter alia,* that the Act of June 20, 1939, P. L. 479, 24 P. S. Supp. § 571, was unconstitutional in that it violated the "impairment of contract" clause of the Federal Constitution, the said action having proceeded as aforesaid.

ARGUMENT.

I. The Act of June 20, 1939, P. L. 479, 24 P. S. Supp. § 571, Authorizing the Reduction in the Petitioner's Salary, Did Not Impair the Obligation of the Contract Between the Petitioner and the Respondent, Because in the Said Contract, the Legislature Reserved the Right to Reduce, or to Authorize the Respondent's Board of Education to Reduce, the Petitioner's Salary Specified in Said Contract.

It is difficult to understand how counsel for the petitioner can seriously contend that the Act of June 20, 1939, P. L. 479, 24 P. S. Supp. § 571, is unconstitutional on the ground that it impairs, or authorizes the impairment of, the obligation of the contract between the petitioner and the respondent, in view of the decisions of the Supreme Court of Pennsylvania in the

Teachers' Tenure Act Cases,
329 Pa. 213 (1938).

Because of the importance of the decisions in those cases, they should be carefully considered:

Section 2 of the Teachers' Tenure Act of April 6, 1937, P. L. 213, amended § 1205 of the School Code, Act of May 18, 1911, P. L. 309. As amended, the said section required every school district to enter into a written contract with each of its teachers who had a valid contract of employment with the school district on the date the Teachers' Tenure Act became effective. The essential provisions of the required contracts (the form of which is set forth in full in the Act), have been noted above, at pages 3 and 4 hereof.

Prior to the amendment of said § 1205, it had only provided for written contracts between school districts of the *second, third* and *fourth* classes, and their teachers, which contracts could be terminated by the school district, at the end of any year, by giving the teacher 60 days' notice. The Teachers' Tenure Act required these school districts to enter into new contracts with these teachers, of a permanent nature, i. e. the contracts were to continue indefinitely, until the teacher's resignation, or dismissal as provided in the Act, and as a result, the old contracts, containing the right on the part of the school district to dismiss the teacher, were, in effect, annulled or cancelled. It was, therefore, contended that the Teachers' Tenure Act was unconstitutional because it impaired the obligation of the contracts between the school districts of the second, third and fourth classes and their teachers, which were in existence when the Act went into effect.

It was further contended that the said Act was unconstitutional because it abridged the right of future legislatures to enact appropriate laws relating to the public schools, as required by Article X, § 1, of the Constitution of Pennsylvania, which provides that "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose." The basis of this argument was, that since the required contracts between school districts and their teachers were permanent, i. e. of indefinite duration, future legislatures could not enact any statutes affecting said contracts without impairing the obligations contained therein.

However, these arguments were emphatically rejected by the Pennsylvania Supreme Court in the decision in the *Teachers' Tenure Act Cases, supra.*

In that case, the Court *held* that, both *expressly* and *by implication*, the existing contracts between the school districts and the teachers there involved, and also, the new contracts required by the Teachers' Tenure Act, contained a reservation by the Legislature of the right to change, modify or even abolish the said contracts at any time, and that accordingly, any such action by the Legislature would not be invalid as an impairment of the obligations of the said contracts. In holding that both the existing contracts, and the new contracts required by the Teachers' Tenure Act, contained, *by implication*, this reserved right on the part of the Legislature to change, modify or even to abolish the said contracts, the Court said, (329 Pa. 225, 226):

> "Therefore, while the legislature has set up in the new Act a tenure system for teachers and has provided for their qualifications, compensation and contracts, all of these provisions, and the contracts themselves, have written into them by implication from the Constitution a distinct understanding that subsequent legislation may change, modify or abolish the existing features of the school system of (sic-or?) the teachers' contracts. This determination flows from the facts that if the Constitution is to be operative at all times, we cannot restrict it so that it becomes stagnant, and expose it to future ruin by so doing. For these reasons, appellants' objection that the Teachers' Tenure Act, abridges the power of future legislatures falls, because a subsequent legislature may abolish this Act, in toto, if it deems it necessary to do so under Article X, Section 1. And such future action can, for the same reason, be taken without producing an impairment of the

obligations of the contracts for which the new Act provides because the Constitution only permits such contracts to be made subject to the right of change or regulation by future legislatures. This rule also applies to contracts entered into under the prior School Code.

"This principle is similar to that applied to other contracts affected with a public interest, which are considered to be made in contemplation of the police power of the State to protect the health, morals and safety of its citizens. See *Leiper v. Balto. & Phila. R. R. Co.*, 262 Pa. 328; *Statler v. United States Savings & Trust Co.*, 326 Pa. 247. And see, under the constitutional power of Congress over the currency, the decisions of the Federal Supreme Court on the gold clause: *Norman v. B. & O. R. R. Co.*, 294 U. S. 240; *Nortz v. United States*, 294 U. S. 317. In *Home Building & Loan Assn. v. Blaisdell et al.*, 290 U. S. 398, at 435, it was said: 'Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.' Even if no mention were made in these contracts of the reserved power in the legislature to alter the school laws, it would be deemed to exist by essential implication."

See also, 329 Pa. 228, 229, where the Court further *held* that both the existing contracts, and the new contracts required by the Teachers' Tenure Act, *expressly* contained the reservation, by the Legislature, of its right to enact future legislation affecting the said contracts, in the following words:

"The legislature, in providing by the Act of 1929 the form of contract to be executed by the teacher, expressly recognized its qualified nature by including the

> proviso that it was to be subject to the provisions of the Act of 1911 'and the amendments thereto'. And the same provision is in the Act of 1937. The language of these clauses is broad enough to include future amendments as well as those existing at the time the contracts were entered into, and it indicates the intention of the parties to submit their relationship to legislative change. The Act of 1937 itself is such an amendment."

This rule, that the contracts between school districts and their teachers are subject to future legislative enactments, has been repeatedly reaffirmed by the Pennsylvania Supreme Court. See, inter alia, *Smith v. Philadelphia School District*, 334 Pa. 197 (1939), and *Bragg v. Swarthmore School District*, 337 Pa. 363 (1940).

It would seem to be clear, therefore, that under the authority of the decisions referred to above, the Act of June 20, 1939, P. L. 479, under the authority of which the respondent's Board of Education adopted the Resolution effecting the reduction in the petitioner's salary, is entirely valid and constitutional, and that neither the said Act, nor the reduction in the petitioner's salary, can be deemed invalid or unlawful, as an impairment of the obligation of petitioner's contract with respondent.

Notwithstanding the foregoing decisions, counsel for the petitioner still urge that the Act of 1939 impairs, or authorizes an impairment of, the contract between the petitioner and the respondent, and in support of this contention, they cite

> *State of Indiana ex rel. Anderson v. Brand*, (1938), 303 U. S. 95, 58 Sup. Ct. Rep. 443.

It is submitted, however, that that case is clearly distinguishable from the case at bar. That case involved the

State of Indiana's Teachers' Tenure Act of March 8, 1927, Acts of 1927, p. 259, c. 67, Burns' Ind. Stat. Ann. Supp. 1929, § 6967.1 et seq., § 1 of which Act provided, in part, as follows:

> "Section 1. Be it enacted by the general assembly of the State of Indiana. That any person who has served or who shall serve under contract as a teacher in any school corporation in the State of Indiana for five or more successive years, and who shall hereafter enter into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation * * * Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force unless succeeded by a new contract signed by both parties or unless it shall be cancelled as provided in section 2 of this act:"

Under this Act, the appellant-school teacher had acquired an "indefinite contract" with a township school corporation. Subsequently, the Indiana Legislature enacted the Act of March 1, 1933, Acts of 1933, p. 716, c. 116, § 1, Burns' Ind. Stat. Ann. 1933, § 28-4307, which omitted township school corporations from the provisions of the Teachers' Tenure Act of 1927, i. e. the said Act of 1927 was repealed insofar as township school corporations and teachers were concerned, and, thereupon, the appellant-school teacher's employer, a township school corporation, attempted to cancel the appellant's contract.

The Supreme Court of Indiana *held* that the cancellation of the appellant's contract was valid and effective under the Act of 1933, but the decision of that Court was

reversed by United States Supreme Court, which *held* that the Act of 1933 impaired the obligation of the appellant's "indefinite contract". However, that decision of the United States Supreme Court is distinguishable from the case at bar in two important respects as follows:

FIRST: *The Indiana Teachers' Tenure Act did not contain a reservation of the right to amend the said Act,* and prior to the decision of the Indiana Supreme Court in that one case, the said Court had uniformly *held,* in effect, that the "indefinite contracts" provided for in the said Act constituted permanent contracts of employment. See 303 U. S. at page 105, 58 Sup. Ct. Rep. at 448, where Mr. Justice Roberts, speaking for the Court, said:

> "Until its decision in the present case the Supreme Court of the State had uniformly held that *the teacher's right to continued employment by virtue of the indefinite contract* created pursuant to the act was contractual." (Emphasis supplied.)

On the other hand, the Teachers' Tenure Act of Pennsylvania, as noted above, expressly provides that the contracts therein provided for, shall contain the following provision:

> "This contract is subject to the provisions of the act approved the eighteenth day of May one thousand nine hundred and eleven (Pamphlet Laws three hundred nine) entitled 'An act to establish a public school system in the Commonwealth of Pennsylvania together with the provisions by which it shall be administered and prescribing penalties for the violation thereof providing revenue to establish and maintain the same and the method of collecting such revenue and repealing all laws general special or local or any parts thereof that are or may be inconsistent therewith' *and the amendments thereto.*" (Emphasis supplied.)

And, as has also been noted, the Pennsylvania Supreme Court has held that the words, "and the amendments thereto," are ". . . broad enough to include future amendments as well as those existing at the time the contracts were entered into. . . ." *Teachers' Tenure Act Cases,* 329 Pa. 213, 228-229.

SECOND: The decision of the United States Supreme Court in *State of Indiana ex rel. v. Brand, supra,* is also distinguishable from the case at bar in that the statute involved in that case, (which attempted to abolish tenure contracts between *township* school districts and their teachers), was not a proper, *bona fide* exercise of the police power of the Indiana Legislature with respect to such contracts, whereas the statute here before this Court is unquestionably a proper, *bona fide* exercise of the police power of the Legislature of Pennsylvania. The validity of both of these bases for distinguishing the decision in *State of Indiana ex rel. v. Brand, supra,* from the instant case, was recognized by Judges Rhodes in the opinion of the Pennsylvania Superior Court in this case. See 144 Pa. Superior Ct. (Advance Sheets) 321, at pages 331, 332 (R. 19, 20), where the Court said:

> "It is true, as counsel for defendant here observes, that the Indiana Teachers' Tenure Law does not appear to have included any reference to the effect of amendments upon the contracts ordained by the statute, which may be a sufficient distinction of fact to remove the present controversy from the force of that holding. But it must further be noted that the Act of 1933 was there struck down not merely because it interfered with the fulfillment of a contract previously in being, but because, limited as it was to townships, it did so for no discoverable public purpose. The opin-

ion of the court, written by Mr. Justice Roberts, said in part (303 U. S. 95 at page 108, 82 L. Ed. 685, at page 695):

> "'It is significant that the Act of 1933 left the system of permanent teachers and indefinite contracts untouched as respects school corporations in cities and towns of the state. It is not contended, nor can it be thought, that the legislature of 1933 determined that it was against public policy for school districts in cities and towns to terminate the employment of teachers of five or more years' experience for political or personal reasons and to permit cancellation, for the same reasons, in townships.
>
> "'Our decisions recognize that every contract is made subject to the implied condition that its fulfillment may be frustrated by a proper exercise of the police power but we have repeatedly said that, in order to have this effect, the exercise of the power must be for an end which is in fact public and the means adopted must be reasonably adapted to that end, and the Supreme Court of Indiana has taken the same view in respect of legislation impairing the obligation of the contract of a state instrumentality.
>
> "'The causes of cancellation provided in the Act of 1927 and the retention of the system of indefinite contracts in all municipalities except townships by the Act of 1933 are persuasive that the repeal of the earlier act by the later was not an exercise of the police power for the attainment of ends to which its exercise may properly be directed.'

"The necessary converse of that reasoning seems to be that for a justifiable public purpose applying to

all school districts the repeal of the tenure provided by the Act of 1927 might have been effectively accomplished.

"Such a justifiable public purpose is apparent on the face and in the very terms of the Act of 1939 here in question."

It would seem to be clear, therefore, that the degree of future control, retained by the Legislature of Pennsylvania over the tenure contracts between the school districts in Pennsylvania and their teachers, is very much greater than the degree of future control retained by the Indiana Legislature over the teachers' tenure contracts in that state. In that state, since no right of future control over such contracts was *expressly* retained or reserved by the Indiana Legislature, there remained in it only the *implied* right to control such contracts in the manner, and to the extent, that such control could be supported, or justified, as a valid, *bona fide* exercise of the police power. On the other hand, by virtue of the *express* provisions of the Pennsylvania Teachers' Tenure Act of 1937, as amended, and the tenure contracts authorized thereby, the right of future control over such contracts reserved to the Legislature of that Commonwealth is unlimited,—that Legislature "may change, modify or abolish the existing features of the . . . teachers contracts." *Teachers' Tenure Act Cases,* 329 Pa. 213, 225. It is evident, therefore, that the decision in *State of Indiana ex rel. v. Brand, supra,* only determines the extent of the control which may be exercised by the Legislature of the State of Indiana over the teachers' tenure contracts of that state, and accordingly, the said decision is not determinative of the extent of the control which may be exercised by the Legislature of Pennsylvania over the teachers' tenure contracts of that state.

Th respondent's contention, that the Act of 1939 here under consideration, is not unconstitutional on the ground that it impairs, or authorizes an impairment of, the contract between the respondent and the petitioner, is also supported by the two decisions of this Court in

Gelfert v. National City Bank of New York, 311 U. S. 221, 61 Sup. Court Rep. 898, and

United States Mortgage Co., et al. v. Matthews, et al., 293 U. S. 232, 55 Sup. Court Rep. 168.

In *United States Mortgage Co. et al. v. Matthews, et al., supra,* the facts were as follows:

On July 30, 1925, one Warner executed and delivered to the Mortgage Guarantee Company a mortgage upon certain real estate in Baltimore, Maryland, to secure $3,000. loaned to Warner by the said Company. The mortgage contained the usual covenants concerning interest, insurance, taxes, etc., and also the following provision:

> "And the said mortgagor doth hereby declare his assent to the passing of a decree by the Circuit Court of Baltimore City or the Circuit Court No. 2 of Baltimore City for a sale of the property hereby mortgaged in accordance with sections 720 to 732 inclusive of Chapter 123 of the laws of Maryland passed at the January session 1898 or any amendments or additions thereto."

In July, 1932, the mortgagee assigned to respondents, Mary and John Matthews, an undivided 500/2950 interest in the unpaid portion of the debt—$2,950.

When the mortgage was executed, section 720, c. 123, Acts Md. 1898, was in force. It provided:

> "In all cases of conveyances of lands or hereditaments or of chattels real, or goods and chattels per-

sonal, situate in the said City, wherein the mortgagor shall declare his assent to the passing of a decree for the sale of the same, it shall be lawful for the mortgagee or his assigns at any time after filing the same to be recorded, to submit to either of the Circuit Courts of Baltimore City the said conveyances or copies thereof, under seal of the Superior Court; and the Circuit Court to which the same is so submitted, may thereupon forthwith decree that the mortgaged premises shall be sold at any one of the periods limited in said conveyances for the forfeiture of said mortgages or limited for a default of the mortgagors, and on such terms of sale as to the said court may seem proper, and shall appoint by said decree a trustee or trustees for making such sale, and shall require bond and security for the performance of the trust as is usual in cases of sales of mortgaged premises." Article 4, Code Public Local Laws of Maryland (1930 Edition), entitled "Baltimore City", subtitle "Mortgages," § 720.

The Maryland Court of Appeals in *Richardson v. Owings* (1898) 86 Md. 663, 39 A. 100, had construed the provisions of section 720, and ruled that one who owned part of a mortgage upon property in Baltimore, by proceeding under provisions of that section, might obtain the decree there provided for.

There was no amendment or addition to section 720, until the passage of chapter 56, Acts 1933 (Ex. Sess.) approved December 15, 1933. That chapter provided as follows:

"In all cases submitted to either of the Circuit Courts of Baltimore City for the passage of a decree as provided for in Section 720 aforesaid, no such decree shall hereafter be passed during the period of emergency hereinafter declared, unless such application is

made or concurred in by the record holders of not less than 25% of the entire unpaid mortgage debt, it being hereby declared to be the intent of this Section during the period this Section is effective, that the holder or holders of a fractional interest in an entire mortgage debt of less than 25% of the entire interest, shall not have recourse to the summary and exparte remedies given under Section 720."

On December 22, 1933, the Matthews instituted a proceeding in Circuit Court No. 2 of Baltimore City, wherein they alleged that the mortgage was in default and requested a decree of sale, as permitted by Section 720 of the Maryland law quoted above. Thereupon, the United States Mortgage Company, the owner of the equity of redemption, and the Mortgage Guarantee Company, which was the holder, or duly authorized representative, of approximately 83% of the unpaid mortgage debt, intervened in the proceeding, and opposed the granting of the decree of sale on the ground that such a decree was prohibited by the new section 720A also quoted above.

Both the Lower Court and the Maryland Court of Appeals held that Section 720A was unconstitutional, on the ground that it impaired the obligation of the contract contained in the mortgage. The Court of Appeals held that the clause in the mortgage by which the mortgagor gave assent to decree for sale of the property as provided by section 720-732 "or any amendments or additions thereto," when properly construed, did not amount to an agreement that the proceeding should be "governed by any future amendments or additions to those sections which should become effective before the application for the consent decree," but that "the intention of the parties in employing that

language embraced only such amendments or additions as had been made prior to the execution of the mortgage."

However, the Supreme Court reversed the Maryland Court of Appeals, the basis of its decision being indicated in the following excerpt from the opinion of the Court, which was delivered by Mr. Justice McReynolds, (293 U. S. 236, 237; 55 Sup. Ct. Rep. 170):

> "We cannot sanction the conclusion of the Court of Appeals on this point. The assent set forth in the mortgage was 'to the passing of a decree * * * for a sale of the property hereby mortgaged in accordance with sections 720 to 732 inclusive of chapter 123 of the laws of Maryland passed at the January session 1898 or any amendments or additions thereto.' Prior to the mortgage, there had been no such amendment or addition, and it cannot, we think, be correctly said that 'the intention of the parties in employing that language embraced only such amendments or additions as had been made prior to the execution of the mortgage.' On the contrary, the words employed seem to us sufficient to embrace the amendments and additions thereafter made by chapter 56. A contrary holding would deprive the words employed of their customary meaning. And we find nothing which requires us to accept any other meaning.
>
> "It follows that the challenged act cannot properly be said to impair the obligation of the agreement between the parties within the meaning of the Federal Constitution."

Since the contract between the petitioner and the respondent provides that, "This contract is subject to the provisions of the act approved the eighteenth day of May, one thousand nine hundred and eleven, (Pamphlet Laws three hundred nine) . . . *and the amendments thereto*", it

would seem to be clear that the instant case is unquestionably governed by the decision of the Supreme Court in *United States Mortgage Co. et al. v. Matthews, et al., supra*, and the petitioner's labored effort to distinguish that decision from the instant case is so obviously lacking in merit that no further discussion thereof is necessary.

The case of

Gelfert v. National City Bank of New York, 311 U. S. 221, 61 Sup. Ct. Rep. 898, (1941),

involved the constitutional validity of the New York mortgage deficiency judgment act. When the mortgage involved in that case was created, Section 1083 of the New York Civil Practice Act provided that the amount of the deficiency judgment was to be measured by the residue of the debt remaining unsatisfied after the sale of the mortgaged property and the application of the proceeds pursuant to the directions contained in the judgment.

Subsequently, a new Section 1083 was enacted which provided, in substance, that the Court, in determining the amount of a deficiency judgment, should, on appropriate motion, "determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises", and should deduct from the amount of the debt the "market value as determined by the court or the sale price of the property, whichever shall be higher."

The question then arose whether the new Section 1083 was constitutional as applied to a mortgage created prior to its enactment, it being contended, of course, that so applied, the new Section impaired the obligation of the contract contained in such a mortgage. However, the Supreme Court *held* that the new Section 1083 was not unconstitutional, because the effect of the Section was merely to pre-

vent a Mortgagee from collecting more than the amount of his debt. In so holding, the Court, per Mr. Justice Douglas, said (61 Sup. Ct. Rep. 901, 902):

> "The formula which a legislature may adopt for determining the amount of a deficiency judgment is not fixed and invariable. That which exists at the date of the execution of the mortgage does not become so embedded in the contract between the parties that it cannot be constitutionally altered. As this Court said in Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398, 435, 54 S. Ct. 231, 239, 78 L. Ed. 413, 88 A. L. R. 1481, 'Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.' And see Voeller v. Neilston Warehouse Co., 312 U. S. , 61 S. Ct. 376, 85 L. Ed. . It is that reserved legislative power with which we are here concerned."

It would seem to be clear that if such a deficiency judgment act was valid as applied to mortgages created prior to its enactment, then *a fortiori*, the Act of 1939 now before this Court is also valid. In other words, *Gelfert v. National City Bank of New York, supra*, definitely supports the position of the respondent in the instant case.

It is submitted, therefore, that the Act of 1939 is not unconstitutional on the ground that it impairs, or authorizes an impairment of the contract between the petitioner and the respondent.

II. The Decisions of the Pennsylvania Supreme Court, Holding That the Written Contracts Between the Incorporated Public School Districts of That State and Their Teachers, Required by the Teachers' Tenure Act of April 6, 1937, P. L. 213, Contained a Reservation, by the Legislature of Pennsylvania, of the Right to Change, Modify, or Even to Abolish, the Said Contracts, Are Binding Upon This Court.

It is important to note that the Teachers' Tenure Act of April 6, 1937, P. L. 213, prescribed the exact form and content of the written employment contracts which the Act required the incorporated public school districts of Pennsylvania to enter into with their teachers, the complete form of such contracts being set forth *verbatim* in the text of the said Act. Obviously, therefore, the determination of the nature and extent of the obligations contained in the said contracts involves the construction of the statute requiring such contracts to be entered into, and accordingly, the decisions of the Supreme Court of Pennsylvania construing the said contracts, i. e. construing the said Act of April 6, 1937, P. L. 213, are binding upon this Court.

It follows, therefore that since the Supreme Court of Pennsylvania has repeatedly *held* that the written employment contracts between the incorporated public school districts of that state and their teachers, required by the Teachers' Tenure Act of April 6, 1937, P. L. 213, contained a reservation, by the Legislature, of the right to change, modify or even to abolish, such contracts, the Act of June 20, 1939, P. L. 479, which merely authorized such school districts of the first class to reduce, temporarily, the salaries of teachers who had theretofore been receiving $2,500.,

or more, per year, cannot be said to be unconstitutional as a violation of the "impairment of contract" clause of the Federal Constitution.

CONCLUSION.

For the reasons herein set forth, the respondent respectfully prays that Your Honorable Court will deny the petitioner's prayer for a writ of certiorari to the Supreme Court of Pennsylvania in this proceeding.

Dated: March 18, 1942.

Respectfully submitted,

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